Michael F. Del Casino
Regulatory Division Manager

Suite 1000
1120 20th Street, NW
Washington DC 20036
202-457-2023
FAX 202-263-2616

December 16, 2002

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Ex parte, in the matter of : The Verizon Petition for Emergency Declaratory and other relief (WC Docket No. 02-202) and certain issues regarding revisions to Tariff Rates, Terms and Conditions in WC Docket Nos. 02-304, 02-317 and 02-319.

Dear Ms. Dortch,

On Friday, December 13, 2002, Bob Quinn and I from AT&T and David Lawson from Sidley & Austin (representing AT&T) met Matt Brill from Commissioner Abernathy's office.

We discussed AT&T's view of issues raised in the above referenced proceedings. Specifically, AT&T discussed alternatives to the ILEC proposals focusing on the situations that would trigger an access provider's ability to demand deposits from its customers. AT&T discussed the level of non-payment that would trigger a deposit and a shortened notice period requirement for collection of deposits. In addition, AT&T provided it's preliminary assessment of suggested proposals for advanced billing of switched access and proposed modifications to billing frequency. The details of our discussion focused on AT&T's views provided in the attached Ex Parte.

Sincerely,

Attachment

cc: Matt Brill

SIDLEY AUSTIN BROWN & WOOD LLP

CHICAGO | DALLAS | LOS ANGELES | NEW YORK | SAN FRANCISCO

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com

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EX PARTE

December 9, 2002

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202

Dear Ms. Dortch:

I am writing with regard to the proposals made by Verizon and other incumbent local exchange carriers to obtain authority to revise the longstanding tariff prescription regarding the ILECs' ability to demand security deposits from customers with a proven history of nonpayment or with no established credit. While the LECs' proposed revisions are overbroad and unjustified, there is a reasonable and targeted proposal, which AT&T outlines below, that would allow ILECs to demand security deposits from the carriers that pose the most serious risks of nonpayment. AT&T's proposal allows ILECs to obtain, on short notice, security deposits of up to two months of access charges from carriers that fail to pay a significant portion (*i.e.*, non-payment of 10% or more) of the undisputed amount of a monthly bill for any two months during the most recent 12 month period. This proposal provides substantial additional protections to incumbent LECs to reduce the already extremely low risk of non-payment of access, while helping to ensure that such deposit requirements are targeted to customers posing the most serious risks and cannot be used in an anticompetitive manner to harm otherwise healthy carriers.

In sharp contrast, another proposed solution – to allow incumbent LECs the ability to bill in advance *all* access customers, regardless of the risks of nonpayment, for any switched access services – is unlawful, unreasonable, and extremely harmful to the industry and to consumers. Most fundamentally, such an approach is patently overbroad. The advance billing proposal would require even carriers with impeccable payment records to begin paying for access services at least a month earlier. This proposed solution is entirely unresponsive to the alleged problem. According to the ILECs, the problem is *not* that all (or even most) carriers fail to pay for access services in a timely manner. Rather, the ILECs have claimed that they have accumulated growing bad debt expense because a small minority of carriers have been unable to pay for substantial amounts of access services.[1] At most, the appropriate response to such claims is to seek to identify the limited number of carriers that pose the highest risk of non-payment, and to allow the ILECs to obtain reasonable security deposits only from those carriers. The advance billing proposal, however, turns the asserted problem on its head, and demands that *all* carriers suffer the consequences caused by the minority of carriers that are unable to pay for services.

The harm to otherwise financially healthy carriers that would result from this radical change to allow advanced billing for all access services would be both extensive and profound. Most significantly, advanced billing of switched access service (and other access services billed on the basis of usage) would create a substantial "mismatch" between expense and revenues for interexchange carriers. In virtually all circumstances, IXCs bill their end user customers for usage-based services in arrears. Because IXCs do not collect revenue for such services until well after those services are billed, any proposal allowing ILECs to bill switched access services in advance would mean that IXCs would pay for switched access services *far before* they can obtain revenue for the services they provide using those switched access services. The financial impact of that mismatch would cause severe harm even to the largest and most financially healthy IXCs.

Further, faced with a significant mismatch between revenues and expenses, and given the intensely competitive nature of the long distance market, IXCs would be severely restricted in their ability to reduce the financial effect of new advanced access billing procedures by collecting end user revenues more quickly, either by billing services in advance or by other methods. The ILECs, by contrast, face no competitive constraints in their ability to make such wide-ranging changes in their billing practices. Even if the ILECs were to incur costs to change their billing procedures, they may find it advantageous to do so simply to raise the costs of IXCs, who are increasingly rivals to the ILECs in the provision on interLATA services. The very fact that the ILECs would have authority to implement such a drastic change in billing practices creates an unwarranted and dangerous risk to IXCs.

Moreover, any change to advanced billing for switched access services would cause a whole additional set of costs and would pose substantial administrative burdens for both ILECs and IXCs. One of the very reasons that such services are now billed in arrears is that it is simply too difficult to bill in advance for services that depend on the amount of usage. The intercarrier billing process for access services is already costly and burdensome. Adding a system in which carriers are required to estimate charges for usage-based services, verify the

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[1] As AT&T has shown, the actual amounts of uncollectibles for most ILECs remain less than 1 percent of revenues.

actual amounts used, and then true-up the actual amounts paid imposes another unnecessary layer of complexity.

For all these reasons, the ILECs' initial tariff revisions were – at least on their face – designed to extract deposits only from carriers that met certain "triggers" that the ILECs asserted were reasonably correlated to the risk of non-payments, and thus would exclude carriers that posed no significant nonpayment risks.[2] Although the ILEC-proposed triggers were in fact far too broad and not sufficiently linked to non-payments risks, even the ILECs recognized that it was not necessary to adopt far-reaching changes to the entire intercarrier billing process in order to remedy any perceived problem with increasing bad debt expense. Requiring all IXCs, regardless of payment risks, to be billed in advance of receipt of switched access services is therefore not merely unwise, it would be unlawful for the Commission to adopt it at this stage in the proceeding. Nothing in Verizon's Petition for Emergency Declaratory Relief or in the Commission's Notice requesting comment on the petition even hinted that the Commission might adopt policies allowing drastic changes allowing the advance billing of switched access services. In these circumstances, the Administrative Procedure Act ("APA") prevents the Commission from adopting that course of action unless it provides proper notice and seeks additional comment.[3]

The unreasonableness of any advance billing approach is even more apparent given the more targeted alternatives that the Commission could consider to address the claimed risks of nonpayment of access services. In particular, AT&T proposes the following alternative, in which ILECs would be permitted to revise their tariffs to demand security deposits from access customers in these circumstances:

> (1) an ILEC could seek a deposit if a customer fails to pay a significant part (specifically, 10% or more is left unpaid) of the undisputed amount of a monthly bill for any two months during the most recent 12 month period;
>
> (2) the deposit (which could consist of cash, a letter of credit, or third party guaranty) would be equal to no more than two months of access services (calculated using the two most recent bills); a customer would be required to pay the two-month deposit within 14 days of being notified by the ILEC that the customer has become eligible for such deposit;

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[2] In this regard, many ILECs did not even propose advance payments at all, but rather simply sought security deposits from selected carriers.

[3] *E.g.*, *Shell Oil Co.* v. *EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991) (final rule must be a "logical outgrowth" of proposed rules); *Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F.2d 506, 546-47 (D.C. Cir. 1983) (same).

(3) the ILEC must pay interest on the deposit equal to the amount of interest that the ILEC seeks from customers for late payments or, if the ILEC does not impose an interest rate for late payments, then the ILEC must pay an interest rate at no less than the market rate.

This proposal allows the ILECs to obtain security deposits from those carriers that present a genuine risk of non-payment, and also limits the ILECs' ability to harm interLATA competition by using their authority to demand security deposits in a discriminatory fashion. The proposed "trigger" for the deposit is based on proposals by certain ILECs to demand deposits based on an customer's failure to pay two access bills in any 12 month period, or to fail to pay in any month more than $250,000 in access services. Unlike those triggers, however, the trigger proposed by AT&T is based on a customer's nonpayment of a *percentage* of an access bill, and therefore would not allow an ILEC to demand a substantial security deposit for very minor payment discrepancies. In addition, the proposal allows the ILEC to obtain the deposit quickly – in about 14 days, which is even less time proposed by some ILECs.[4] Moreover, by requiring the ILEC to pay interest on *all* deposits at a rate the ILEC employs for late payments (or a market rate), the proposal provides some limits on the ILECs' substantial incentives to demand deposits in order to raise its rivals' costs.[5]

AT&T is willing to discuss this proposal or other alternatives that target the security deposits that ILECs can demand to those access customers that have a demonstrated and serious risk of non-payment.[6] However, implementing drastic and wholly unwarranted changes to the intercarrier billing system allowing ILECs to bill all customers in advance for switched access services is both unlawful under the APA and in all events patently unreasonable, and should not be adopted.

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[4] SBC's proposed tariff revisions allowed the customer up to 21 days after notice to provide a deposit; Verizon required that the customer provide the deposit 10 days after notice.

[5] Indeed, Verizon itself has argued that requiring the payment of interest for deposits reduced its incentives to discriminate. However, because Verizon's particular proposed revisions provided that it could demand an advance payment that would be interest-free in lieu of a security deposit that would accrue interest, Verizon's proposal in fact simply provided it with incentives to choose to demand advance payments rather than security deposits to avoid paying interest.

[6] Some ILECs have proposed shortening the termination period for discontinuing access service from 30 days to as little as seven days. Although AT&T has no objection to such a procedure – provided that it applies only to carriers that present serious and genuine risks of non-payment, such proposals do not appear necessary where ILECs can rapidly obtain security deposits from customers that are not paying their access bills.

Sincerely,

/s/ Michael J. Hunseder

Michael J. Hunseder

cc: Matthew Brill
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
Lisa Zaina
Jeffrey Carlisle
Tamara Preiss
Kathleen O'Neill
Andrew Mulitz
Julie Saulnier